

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3419 of 1997

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

DHIRUBHA MADHAVSING

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3419 of 1997
MR IS SUPEHIA for Petitioner No. 1
MR M.S. RAO, LD. AGP for Respondent No. 1-3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 21/06/2004

ORAL JUDGEMENT

1. The petitioner challenges the order dated 17th

July, 1993 made by the Director General & Inspector General of Police and the order dated 25th November, 1994 made by the State Government.

2. At the relevant time the petitioner was serving as Unarmed Head Constable and was posted at Detroj Police Station under the District Superintendent of Police, Ahmedabad (Rural). On 24th November, 1988 a chargesheet came to be issued with respect to the inhuman behavior of the petitioner with a complainant one Bansilal Shivabhai Vyas. The alleged act of misconduct was held to be proved after following due procedure. On 29th March, 1990 the petitioner was given notice to show cause why he should not be visited with punishment of reduction in pay by 2 increments. The said notice was not replied by the petitioner. Pursuant to the said show cause notice by order dated 28th May, 1990 made by the District Superintendent of Police, Ahmedabad (Rural) the petitioner was visited with punishment of reduction in pay by two increments for a period of two years. The said order came to be taken into suo motu revision by the Dy. Inspector General Of Police, Ahmedabad Range. The Petitioner was given notice dated 16th August, 1990 to show cause why for the said act of misconduct proved against him he should not be dismissed from service. The said notice was replied by the petitioner. By order dated 28th February 1991 made by the Dy. Inspector General Of Police, Ahmedabad Range, the contentions raised by the petitioner were rejected, however, considering the long service of 31 years and absence of any major penalty, the Dy. Inspector General of Police enhanced the punishment to reduction of pay to the minimum in the scale for a period of 2 years without future effect. Feeling aggrieved, the petitioner preferred appeal before the Director General & Inspector General of Police. In exercise of power conferred upon him by Rule-15 of the Police (Punishments & Appeals) Rules, 1956, he gave notice to the petitioner to show cause why the punishment imposed upon him shall not be enhanced to that of dismissal from service. Pursuant to the said notice and reply given by the petitioner, by impugned order dated 30th December, 1993 made by the Director General & Inspector general of Police the petitioner was ordered to be dismissed from service. The revision application preferred before the State Government against the said order dated 30th December, 1993 came to be rejected on 25th November, 1994. Feeling aggrieved the petitioner has preferred the present petition.

3. Mr. Supehia has submitted that the order of

punishment imposed upon the petitioner on 28th May, 1990 was taken into revision after an undue delay. the impugned order made on revision, therefore, requires to be quashed on the ground of delay alone. He has also submitted that once the order of punishment was taken into revision in exercise of powers conferred by section 27-A of the Bombay Police Act, 1951, the order made in revision cannot be taken in revision by any other authority. He has submitted that the authorities mentioned in section 27-A of the Act enjoy concurrent power of revision and once that power is exercised by one of the said authorities, the revisional order cannot be taken into revision by any of the other authorities. Mr. Supehia has also submitted that before imposing the penalty of dismissal from service the petitioner was not given opportunity of personal hearing. In support of his contentions he has relied upon the judgment in the matter of AMARSING RATANSINH v. UNION OF INDIA & ANR. (1983 (1) GLR pg. 654) and in the matter of F.D. RATHOD Vs. STATE OF GUJARAT (2004 (5) GHCJ, pg. 624). He has also relied upon the observations made by the Honourable Supreme Court in the matter of RAMCHANDRA Vs. UNION OF INDIA (A.I.R. 1986 SC 1173). Mr. Supehia has read over section 27-A of the Bombay Police Act, 1951 (herein after referred to as the 'Act').

4. In the matter of Amarsing Ratansinh (supra) the Division Bench of this Court was considering a case falling under the Railway Protection Force Rules, particularly Rule-60 thereof. In the case before the Bench, on the charge of remaining absent from duty the writ petitioner was ordered to be exonerated. The said order was taken into suo motu revision and in exercise of power under Rule 60 of the Railway Protection Force Rules, 1951, after following due procedure, punishment of reduction in pay was imposed upon the petitioner. Thereafter, the said order of punishment came to be taken into suo motu revision and ultimately the petitioner came to be removed from service. Rule-60 provided that " any authority superior to the authority making the order may, on its own impose, or otherwise, revise, the order (whether original or appellate) passed by said lower authority." Considering the above rule and other relevant provisions the Honourable Court held that the revisional jurisdiction under Rule-60 can be invoked with respect to the order passed by the subordinate authority which is passed in exercise of powers other than revisional powers. In other words the order made in revision under Rule-60 can not be taken into revision under the said Rule. In the matter of F.D. Rathod (supra) similar contention raised with respect to the revisional

jurisdiction under section 27-A of the Act has been accepted by this Court. The Honourable Court has held that section 27-A of the Act confers powers on 3 authorities viz. the State Government, the Inspector General and the Dy. Inspector General. Therefore, this power can be exercised by any of the authorities. Considering the facts of the case the learned Judge held that the said power of revision had already been exercised by the Dy. Inspector General. The order of the Dy. Inspector General could not have been taken into revision by the Inspector General under section 27-A of the Act. In other words a revision under section 27-A of the Act shall not be maintainable against the order made in revision. In the matter of Ramachandra (supra) the Honourable Supreme Court has emphasized the need for recording reasons in support of the order of punishment.

5. It is not in dispute that before enhancing the punishment imposed upon the petitioner to that of dismissal the Director General & Inspector General of police had given notice to the petitioner to show cause against the intended action. The petitioner had also replied to the said show cause notice. As to the personal hearing Mr. Suphia admits that the record does not disclose that the petitioner had applied for personal hearing. This Court has, in the matter of R.M. BAJPAEE Vs. STATE OF GUJARAT & ORS., (1985 (2) GLR, Pg. 1261) relying upon the judgment of the Honourable Supreme Court, held that, "in proceedings of judicial nature, the basic rules of natural justice must be followed but it is not necessarily an incident of the rule of natural justice that personal hearing must be given to the party likely to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making oral representation will not, without more, vitiate the proceedings ". As recorded hereinabove neither the petitioner had requested for personal hearing nor it is demonstrated before this Court that a prejudice has been caused to the petitioner for want of personal hearing. I am, therefore, of the opinion that neither the proceedings nor the impugned order would be vitiated for want of personal hearing.

6. The next question is whether a revision shall lie against the order made under section 27-A of the Act. This Court in the matter of F.D. Rathod (supra) has already held that the revision under section 27-A of the Act shall not lie against the order made in revision under section 27-A of the Act. I, therefore, shall not delve in the matter further. However, in the present case, in my view, the impugned order cannot be said to

have been made by the Director General & Inspector General of Police in exercise of power conferred by section 27-A of the Act. If we peruse the records, the revisional order was made by the Dy. Inspector General of Police enhancing the punishment imposed by the disciplinary authority to that of reduction of pay to the minimum in the scale. This revisional order made by the Dy. Inspector General of Police was not taken into revision by any authority in exercise of power conferred by section 27-A of the Act. It was the petitioner who preferred appeal against the said order before the Director General & Inspector General of Police. The appeal was entertained and decided by the Director General and Inspector General of Police under the provisions of the Bombay Police (Punishments & Appeals) Rules, 1956. Rule-6 thereof provides for an appeal against the order of punishment to the authority specified under Rule-9. Thus the petitioner had preferred appeal under the said Rule-6 to the Director General & Inspector General of Police. Rule-15 of the said Rules empowers the appellate authority, inter alia, to make order as it thinks just and proper, including the enhancement or awarding of more severe punishment. It is evident that while considering the appeal preferred by the petitioner the Director General & Inspector General of Police had invoked the power conferred by Rule-15 of the said Rules. The punishment was enhanced to that of dismissal from service. I am, therefore, of the opinion that, the impugned order of punishment cannot be said to be an order in revision against the order made in revision as contended by Mr. Supehia nor can it be vitiated on that ground.

7. Section 27A of the Act empowers the State Government, the Inspector General or a Deputy Inspector General to, suo motu or on an application made to him, to call for and examine the record of enquiry or proceeding of any subordinate police officer and to make order as provided in the said section. The second proviso to the said section 27A provides that, " no order in revision shall be passed :- (iii) in any case after the expiry of a period of three years from the date of the decision or order sought to be revised." In the present case the order in revision was passed by the Deputy Inspector General of Police on 28th February, 1991. Thus the said order was made within the statutory period of limitation.

8. At last Mr. Supehia has submitted that the order of dismissal made against the petitioner is not commensurate to the gravity of the misconduct proved against him. I am unable to agree with this contention

either. I need not reiterate the act of misconduct proved against the petitioner. Suffice it to say that the conduct of the petitioner was inhuman and was grave enough to invite order of dismissal from service.

9. No other contention is raised before me. The petition is dismissed with cost. Rule is discharged.

Dt: 21-6-2004

(Ms. R.M. Doshit, J)

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